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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

San Francisco Division

JCS

HARMEET K. DHILLON, an individual,

Plaintiff,

v.

DOE 1, an unknown individual, and DOES 2 through 10,

Defendants.

Case Number: C 13 1465

PLAINTIFFS *EX PARTE* APPLICATION FOR LEAVE TO TAKE LIMITED DISCOVERY PRIOR TO A RULE 26(f) CONFERENCE

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I. INTRODUCTION

Plaintiff Harmeet K. Dhillon ("Ms. Dhillon"), by and through her attorneys, makes this *Ex Parte* Application for Leave to Take Limited Discovery Prior to a Rule 26(f) Conference pursuant to Federal Rule of Civil Procedure 26(d), on the grounds that Ms. Dhillon has made a *prima facie* showing of copyright infringement, and without the expedited discovery, Ms. Dhillon will be unable to identify the Defendants with sufficient particularity to effect service of process or to obtain redress for the infringement. This *Ex Parte* Application is supported by the Memorandum of Points and Authorities set forth below and the concurrently-filed Declaration of Harmeet K. Dhillon In Support of *Ex Parte* Application ("Dhillon Decl.").

Ms. Dhillon could not obtain a stipulation for this *Ex Parte* Application because, despite exhausting traditional avenues for identifying Defendants pre-service, she cannot identity the Defendants with whom to confer until the requested discovery takes place. Dhillon Decl., ¶13.

Rule 6(c)(1)(c) of the Federal Rules of Civil Procedure, relating to times for filing motions and setting hearings, provides that for good cause a party may apply *ex parte* for setting a different time to file a motion with respect to a hearing date. Because there is currently no Defendant in this case to oppose any motion, or upon whom to serve a copy of a motion or an *ex parte* application, there would be no opposition if a motion were filed instead of an *ex parte* application. Therefore, no briefing schedule need be set.

II. FACTUAL BACKGROUND

Ms. Dhillon is a civil litigation attorney practicing in San Francisco and an active participant in political matters in the State of California. She has run for the California State Assembly, District 13, in 2008, and for the California State Senate, District 11, in 2012. Ms. Dhillon is also an active member of the California Republican Party ("CAGOP") and currently serves as the Vice Chairman of CAGOP for the 2013-2015 term, and is the

Chairman of the San Francisco Republican Party.

The work at issue in this case is a headshot photograph of Ms. Dhillon taken in 2008 (the "Headshot Photograph"), in connection with her candidacy for Member of the State Assembly, District 13, which Ms. Dhillon has used in her political campaign political activities and in various professional marketing efforts, beginning in June 2008. Dhillon Decl., ¶¶ 2-3. The Headshot Photograph and the copyright therein are solely owned by Ms. Dhillon. Dhillon Decl., ¶3. The Headshot Photograph is registered with the U.S. Copyright Office, which received Ms. Dhillon's complete application on February 21, 2013. Dhillon Decl., ¶5, Exh. A; *see also Cosmetic Ideas, Inc. v. IAC/Interactivecorp*, 606 F.3d 612 (9th Circ. 2010) (receipt of complete application by Copyright Office satisfied requirement in Copyright Act for registration before bringing infringement action).

On February 12, 2013, without Ms. Dhillon's authorization or a valid license, Defendant Doe 1 anonymously published on the website www.MungerGames.net ("MungerGames.net") an article entitled "Meet Harmeet," which featured the Headshot Photograph at the top of the article. Complaint, ¶15; Dhillon Decl., ¶¶ 6-7, Exh. B. On information and belief, Does 2 through 10 cooperatively acted with each other and/or with Doe 1 to distribute unauthorized copies of the Headshot Photograph through the "Meet Harmeet" article. Complaint, ¶16.

Upon learning of the "Meet Harmeet" article, Ms. Dhillon promptly took all reasonable steps to discover the identity of Defendants. Dhillon Decl., ¶8. According to information obtained on www.whois.com, a query and response protocol that allows users to query databases that store the registered users or assignees of an Internet research, the domain name Mungergames.net is hosted by the web hosting provider and domain name registrar, DreamHost ("DreamHost"), owned by New Dream Network, LLC. Dhillon Decl., ¶8, Exh. C.[1]

[1] DreamHost's Privacy Policy explicitly notes that "the contact information that [customers] provide to us is used to register your domain name and is, by the very nature of the domain

On February 13, 2013, Ms. Dhillon emailed DreamHost to alert it of the infringement of her copyrighted material and demanded to be immediately put in contact with the owner of the Mungergames.net website in order to get the copyrighted material taken down. Dhillon Decl., ¶9. DreamHost responded by instructing Ms. Dhillon to submit a formal notification of claimed infringement, pursuant to the Digital Millennium Copyright Act, 17 U.S.C.A. section 512(c)(3)(A)(i-vi). Dhillon Decl., ¶9. Ms. Dhillon complied with this request and submitted a formal notification of infringement pursuant to that statute on February 15, 2013. Dhillon Decl., ¶9. Subsequently, the Headshot Photograph was removed from the "Meet Harmeet" article. Dhillon Decl., ¶10.[2] However, DreamHost has declined to disclose to Ms. Dhillon the account information for owner for the Mungergames.net domain name, or the names, addresses, telephone numbers and/or e-mail addresses of the individual(s) responsible for the posting of the copyrighted material on the "Meet Harmeet" article. Dhillon Decl., ¶11.

Despite the diligent best efforts of Ms. Dhillon and her attorneys, Ms. Dhillon has not been able to discover the identities of Does 1 through 10, who Ms. Dhillon is informed and believes are responsible for the unauthorized copying and distribution of the Headshot Photograph. In order to obtain this critical information, Ms. Dhillon seeks leave from the Court to serve a Rule 45 third-party subpoena on New Dream Network, LLC, of which DreamHost is a registered trademark,[3] prior to a Rule 26 Case Management Conference. A copy of the proposed subpoena is attached to this *ex parte* application as Exhibit 1.

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registration system, available for public viewing in many places on the Internet via the use of the 'whois' tool." DreamHost Privacy Policy, http://dreamhost.com/privacy-policy/.

[2] The "Meet Harmeet" article remains posted on Mungergames.net, but Ms. Dhillon's name now appears where the Headshot Photograph once appeared. Dhillon Decl., ¶10.

[3] DreamHost's website states that "DreamHost is a registered trademark of New Dream Network, LLC © 1997-2013. See http://dreamhost.com/.

III. ARGUMENT

A. Standards for Granting Expedited Discovery

Rule 26(d) of the Federal Rules of Civil Procedure provides that a party may not seek discovery from any source before the party has conferred as required by Rule 26(f), unless such discovery is authorized by, *inter alia*, a court order. Fed. R. Civ. Proc. 26(d). Courts in this district apply the conventional "good cause" standard in determining whether expedited discovery is warranted under Rule 26(d). *See, e.g., Semitool, Inc. v. Tokyo Electron Am., Inc.*, 208 F.R.D. 273, 276 (N.D. Cal. 2002); *IO Group, Inc. v. Does 1-65*, No. C 10-4377 SC, 2010 WL 4055667, at *2 (E.D. Cal. June 9, 2010); *Yokohama Tire Crop. V. Dealers Tire Supply, Inc.*, 202 F.R.D. 612, 613-14 (D. Ariz. 2001) (collecting cases and standards). "Good cause may be found where the need for expedited discovery, in consideration of the administration of justice, outweighs the prejudice to the responding party." *Semitool, Inc.*, 208 F.R.D. at 276. Courts have recognized that "good cause is frequently found in cases involving claims of infringement and unfair competition." *Id.*

According to the Ninth Circuit, "where the identity of alleged defendants will not be known prior to the filing of a complaint[,]...the plaintiff should be given an opportunity through discovery to identify the unknown defendants, unless it is clear that discovery would not uncover the identities, or that the complaint would be dismissed on other grounds." *Gillespie v. Civiletti*, 629 F.2d 637, 642 (9th Cir. 1980); *see also Wells Fargo & Co. v. Wells Fargo Express Co.*, 556 F.2d 406, 430, n. 24 (9th Cir. 1977) (holding that a district court does have jurisdiction to determine the facts relevant to whether or not it has *in personam* jurisdiction in a given case). The problem of the unknown defendant infringing copyrights has worsened with the growth of the Internet. As discussed by this Court in *Columbia Ins. Co. v. Seescandy.com*, 185 F.R.D. 573, 577 (N.D. Cal. 1999),

> "With the rise of the Internet has come the ability to commit certain tortious acts, such as defamation, copyright infringement, and trademark

> infringement, entirely on-line. The tortfeasor can act pseudonymously or anonymously and may give fictitious or incomplete identifying information. Parties who have been injured by these acts are likely to find themselves chasing the tortfeasor from Internet Service Provider (ISP) to ISP, with little or no hope of actually discovering the identity of the tortfeasor. In such cases the traditional reluctance for permitting filings against John Doe defendants or fictitious names and the traditional enforcement of strict compliance with service requirements should be tempered by the need to provide injured parties with an forum [sic] in which they may seek redress for grievances."
>
> *Columbia Ins. Co,* 185 F.R.D. at 577.

In evaluating whether a plaintiff establishes good cause to learn the identity of Doe defendants through early discovery, courts examine whether the plaintiff (1) identifies the Doe defendant with sufficient specificity that the court can determine that the defendant is a real person who can be sued in federal court, (2) recounts the steps taken to locate and identify the defendant, (3) demonstrates that the action can withstand a motion to dismiss, and (4) proves that the discovery is likely to lead to identifying information that will permit service of process. *See Columbia Ins. Co. v. Seescandy.com*, 185 F.R.D. 573, 578-80 (N.D. Cal. 1999). As discussed below, Plaintiff has "exhausted traditional avenues for identifying Defendants pre-service" and meets the four good cause factors, and is entitled to expedited discovery. *Columbia Ins. Co., supra,* 185 F.R.D. at 578.

B. Ms. Dhillon Has Identified the Defendants With Sufficient Specificity

The four-part good cause test requires a plaintiff to "identify the missing party with sufficient specificity such that the Court can determine that defendant is a real person or entity who could be sued in federal court," in order "to ensure that federal requirements of jurisdiction and justiciability can be satisfied." *Columbia Ins. Co, supra,* 185 F.R.D. at 578.

Ms. Dhillon's papers establish that DreamHost is the web host for the domain name Mungergames.net, and that DreamHost has in its possession the true names and identities of the owner(s) of Mungergames.net. Dhillon Decl., ¶¶8-11. To the extent that the owner(s) of Mungergames.net are not the individual(s) and/or entity(ies) directly responsible for the

copying and distribution of the Headshot Photograph, those individual(s) or entity(ies) reasonably will be able to identify the appropriate defendants. Ms. Dhillon has made a satisfactory showing that there is an actual person or persons behind the infringing acts who would be amenable to suit in federal court. The MungerGames website exclusively discusses issues that relate to the internal politics of the California Republican Party and would only be of interest to those involved with the CRP. Ms. Dhillon has identified the entity that should be served with a subpoena.

C. Ms. Dhillon Has Identified All Previous Steps Taken To Locate The Defendants

Ms. Dhillon and her attorneys have made a good faith effort to specifically identify the Defendants in order to allow for service of process on the Defendants, by taking the following steps: 1) upon learning of the "Meet Harmeet" article on the MungerGames website, Ms. Dhillon conducted Internet research revealing that the domain name Mungergames.net is hosted by DreamHost; 2) Ms. Dhillon contacted DreamHost by email to demand disclosure of the identity(ies) of the owners of the Mungergames.net domain name; 3) Ms. Dhillon submitted a formal notification of claimed infringement pursuant to the Digital Millennium Copyright Act. Dhillon Decl., ¶¶7-10. Despite these efforts, DreamHost has declined to disclose the identities of the Doe Defendants. Dhillon Decl., ¶11. Ms. Dhillon has "exhausted traditional avenues for identifying Defendants pre-service" and is entitled to expedited discovery. *Columbia Ins. Co., supra,* 185 F.R.D. at 578

D. Ms. Dhillon's Suit Against Defendants Could Withstand a Motion to Dismiss

Ms. Dhillon can establish that her suit against Defendants could withstand a motion to dismiss, and has clearly made "some showing that an act giving rise to civil liability actually occurred and that the discovery is aimed at revealing specific identifying features of the person or entity who committed that act." *Columbia Ins. Co, supra,* 185 F.R.D. at 580.

To show direct copyright infringement, a plaintiff "must demonstrate (1) ownership of a valid copyright, and (2) copying of constituent elements of the work that are original." *Goldberg v. Cameron*, 787 F.Supp.2d 1013 (N.D. Cal. 2011) (internal citations omitted); *Cavalier v. Random House, Inc.*, 297 F.3d 815, 822 (9th Cir. 2002).

Ms. Dhillon has demonstrated that she owns the sole and valid copyright to the Headshot Photograph, pursuant to a Copyright Transfer Agreement between herself and the creator of the photographs and as a result of her submission of a complete copyright application with the U.S. Copyright Office. *See* Dhillon Decl., ¶4-5. *Cosmetic Ideas, Inc. v. IAC/Interactivecorp*, 606 F.3d 612 (9th Circ. 2010) (receipt of complete application by Copyright Office satisfied requirement in Copyright Act for registration before bringing infringement action); 17 USC 410(c) (registration made before or within five years after first publication of the work shall constitute *prima facie* evidence of the validity of the copyright and of the facts stated in the certificate). Ms. Dhillon has also demonstrated that the Headshot Photograph, in its entirety, was copied and distributed without Ms. Dhillon's authorization or a license by Defendants, via the Mungergames website. *See* Dhillon Decl., ¶6-7. Accordingly, Ms. Dhillon has stated a *prima facie* case for federal copyright infringement.

i. First Amendment Rights Do Not Preclude Expedited Discovery

While Defendants may argue that their unauthorized use of the copyrighted Headshot Photograph is "fair use" pursuant to 17 U.S.C. §107, such an argument must fail under the facts of this case. Under the fair use doctrine, the Court considers (1) the purpose and character of the use, including whether such use is of a commercial nature or is for nonprofit educational purposes; (2) the nature of the copyrighted work; (3) the amount and substantiality of the portion used in relation to the copyrighted work as a whole; and (4) the effect of the use upon the potential market for or value of the copyrighted work. 17 U.S.C. §107; *Harper & Row Publishers, Inc., v. Nation Enterprises*, 471 U.S. 539 (1985).

Even in news reporting, fair use has its bounds. For instance, "there is no general 'newsworthiness' exception... newsworthiness itself does not lead to transformation." *Monge v. Maya Magazines, Inc.*, 688 F.3d 1164, 1176 (9th Cir. 2012); *see also Murphy v. Millennium Radio Grp. LLC*, 650 F.3d 295, 307 (3d Cir. 2011) ("news reporting does not enjoy a blanket exemption from copyright. News organizations are not free to use any and all copyrighted works without the permission of the creator simply because they wish to report on the same events a work depicts"). Similarly, there is no *per se* "public interest" exception to copyright protection. *See, e.g., Harper & Row, supra,* 471 U.S. at 559 ("[i]t is fundamentally at odds with the scheme of copyright to accord lesser rights in those works that are of greatest importance to the public. Such a notion ignores the major premise of copyright and injures author and public alike"). "To negate fair use one need only show that if the challenged use should become widespread, it would adversely affect the potential market for the copyrighted work." *Id.*, 471 U.S. at 559.

The U.S. Constitution, at Article I, §8, Clause 8, empowers Congress to provide for an author's exclusive rights to his work, and this grant "is intended to motivate the creative activity of authors and inventors by the provision of a special reward." *Harper & Row, supra,* 471 U.S. at 546. "Anonymous speech, like speech from identifiable sources, does not have absolute protection. The First Amendment, for example, does not protect copyright infringement [and]...[p]arties may not use the First Amendment to encroach upon the intellectual property rights of others." *Sony Music Entertainment Inc. v. Does 1-40,* 326 F.Supp.2d 556, 562-63 (S.D.N.Y. 2004). While a person who uses the Internet to download or distribute copyrighted works without permission may be engaging in speech, that person is engaging in speech only to a limited extent, and the First Amendment does not protect the person's identity from disclosure. *See Sony Music Entertainment Inc., supra,* 326 F.Supp.2d 556.

In light of the above authorities and the facts of this case, Defendants will not be

able to establish that their unauthorized use of the Headshot Photograph was statutory fair use. Defendants have copied the *entirety* of the copyrighted material and published the Headshot Photograph, in full, on the Mungergames.net website. While use of a large percentage or the "heart" of a copyrighted work does not necessarily rule out fair use, the remaining factors are not sufficiently in Defendants' favor to overcome the "amount and substantiality of portion used" fair use factor. *See, e.g., Religious Technology Center v. Netcom On-Line Communication Services, Inc.*, 923 F.Supp.1231, 1250 (N.D. Cal. 1995) ("[i]n balancing the various factors, the court finds that the [large] percentage of plaintiffs' works copied combined with the minimal added criticism or commentary negates a finding of fair use"). Defendants do not provide criticism or commentary of the copyrighted work in making unauthorized use of the Headshot Photograph. The fact that the content of the underlying "Meet Harmeet" article may have some public importance is not relevant to fair use of the photograph itself, and moreover, there is no *per se* "public interest" exception to copyright protection. *See Harper & Row, supra,* 471 U.S. at 559. Finally, if Defendants continue to use, copy and distribute the Headshot, it could have a deleterious effect on the value of and the market for Ms. Dhillon's license to use the Headshot Photograph. Dhillon Decl., ¶12. Accordingly, Defendants' use of the Headshot Photograph is not fair use and does not subject this action to a motion to dismiss on that ground.

ii. Privacy Rights Do Not Preclude Expedited Discovery

Ms. Dhillon is also entitled to discovery in light of defendants' minimal expectation of privacy. *See Sony Music Entertainment Inc., supra,* 326 F.Supp.2d 556. DreamHost's Terms of Service, to which its subscribers – including, on information and belief, the Doe Defendants – must commit, requires its subscribers to "warrant[ ] that it has the right to use the trademarks and copyrights applicable to all content and/or products being made available through the customer's account." DreamHost Terms of Service, http://dreamhost.com/terms-of-service/. DreamHost's "Acceptable Use Policy" specifically

prohibits "[t]ransmission of any material in violation of any Country, Federal, State or local regulation," including "housing any copyrighted information (to which the customer does not hold the copyright or an appropriate license) on DreamHost Web Hosting's Server." DreamHost Acceptable Use Policy, http://dreamhost.com/acceptable-use-policy/. DreamHost's Privacy Policy explicitly warns that "identifying information will be provided to law enforcement and officials of the court including attorneys as situations require." DreamHost Privacy Policy, http://dreamhost.com/privacy-policy/. Moreover, DreamHost's Privacy Policy notes that "the contact information that [customers] provide to us is used to register your domain name and is, by the very nature of the domain registration system, available for public viewing in many places on the Internet via the use of the 'whois' tool." DreamHost Privacy Policy, http://dreamhost.com/privacy-policy/. Accordingly, Defendants have little expectation of privacy in distributing copyrighted photographs, including the Headshot Photograph, without permission. *See Sony Music Entertainment Inc., supra,* 326 F.Supp.2d 556.

In sum, defendants' First Amendment rights must give way to plaintiffs' right to use the judicial process to pursue a meritorious copyright infringement claim.

E. The Exemplary Subpoena Is Likely To Lead to Identifying Information That Will Permit Service of Process

Ms. Dhillon requests that the Court issue an order allowing her to immediately serve (i.e., before a Rule 26(f) conference) a subpoena on New Dream Network, LLC, on behalf of DreamHost, in substantially the same form as the example attached hereto as Exhibit 1. The example subpoena identifies DreamHost as its recipient and requests production of: "[d]ocuments sufficient to identify the account information for the domain name "Mungergames.net," hosted by DreamHost, including the names, addresses, telephone numbers, and e-mail addresses of the owner(s) of the domain name "Mungergames.net."

The information sought by the subpoena will be sufficient to enable Ms. Dhillon to identify the Doe Defendants and facilitate service of process, and will allow her to pursue this action for copyright infringement. Judges of this District have issued similar orders in similar cases. *See, e.g.*, Judge Joseph C. Spero, Case No. CV10-05885-JCS; Magistrate Judge Maria-Elena James, Case No. C10-04471-MEJ; Magistrate Judge Laurel Beeler, Case No. C10-04468-LB.

IV. THERE IS NO NEED TO TENDER WITNESS AND MILEAGE FEES

The subpoena to be issued will be only for production of documents and records. No appearance at a deposition will be required. Rule 45(b)(1) provides that "[s]ervice of a subpoena upon a person named therein shall be made by delivering a copy thereof to such person and, *if the person's attendance is commanded*, by tendering to that person the fees for one day's attendance and the mileage allowed by law." Fed.R.Civ.Proc. 45(b)(1) (emphasis added). Rule 45(c)(2)(A) provides that "[a] person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, *need not appear at the place of production or inspection unless also commanded to appear for a deposition*, hearing, or trial." Fed.R.Civ.Proc. 45(c)(2)(A) (emphasis added).

To avoid confusion in the event that New Dream Network, LLC insists upon advance payment of witness and mileage fees, Ms. Dhillon requests that the Court's order specify that witness and mileage fees required by Rule 45(b)(1) of the Federal Rules of Civil Procedure do not apply. The Proposed Order includes provisions in this regard.

V. CONCLUSION

In light of the foregoing, Ms. Dhillon respectfully requests that her *Ex Parte* Application be granted, and that the Court enter an order substantially in the form of the Proposed Order filed concurrently herewith.

Date: April 1, 2013

DHILLON & SMITH LLP

By: _____

HAROLD P. SMITH
KRISTA L. DHILLON
PRIYA BRANDES
Attorneys for Plaintiff
Harmeet K. Dhillon

Exhibit 1

To Plaintiff's Ex Parte Application for Leave to Take Limited Discovery Prior to a Rule 26(f) Conference

AO 88B (Rev. 06/09) Subpoena to Produce Documents, Information, or Objects or to Permit Inspection of Premises in a Civil Action

UNITED STATES DISTRICT COURT

for the

Northern District of California

Harmeet K. Dhillon, an individual
Plaintiff
v.
DOE1, an unknown individual, and DOES 2 through 10
Defendant

Civil Action No. CVxx-xxxxx-ABC

(If the action is pending in another district, state where:)

SUBPOENA TO PRODUCE DOCUMENTS, INFORMATION, OR OBJECTS OR TO PERMIT INSPECTION OF PREMISES IN A CIVIL ACTION

To: Custodian of Records, DreamHost Network, LLC, 101 Wilshire Blvd., Ste. 5050, Los Angeles, CA 90017

☑ *Production:* **YOU ARE COMMANDED** to produce at the time, date, and place set forth below the following documents, electronically stored information, or objects, and permit their inspection, copying, testing, or sampling of the material: Documents sufficient to identify the account information for the domain name "Mungergames.net," hosted by DreamHost, including the names, addresses, telephone numbers, and e-mail addresses of the owner(s) of the domain name "Mungergames.net." You are to comply with this subpoena pursuant to the terms set forth in the Order attached hereto as Attachment B.

Place: Dhillon & Smith LLP 177 Post Street, Suite 700 San Francisco, CA 94108	Date and Time:

☐ *Inspection of Premises:* **YOU ARE COMMANDED** to permit entry onto the designated premises, land, or other property possessed or controlled by you at the time, date, and location set forth below, so that the requesting party may inspect, measure, survey, photograph, test, or sample the property or any designated object or operation on it.

Place:	Date and Time:

The provisions of Fed. R. Civ. P. 45(c), relating to your protection as a person subject to a subpoena, and Rule 45 (d) and (e), relating to your duty to respond to this subpoena and the potential consequences of not doing so, are attached.

Date: _____

CLERK OF COURT

OR

_____ *Signature of Clerk or Deputy Clerk*

_____ *Attorney's signature*

The name, address, e-mail, and telephone number of the attorney representing *(name of party)* Plaintif Harmeet K. Dhillon _____, who issues or requests this subpoena, are:

Harold P. Smith, Krista L. Shoquist, DHILLON & SMITH LLP, 177 Post Street, Suite 700, San Francisco, CA 94108, email: kshoquist@dhillonsmith.com; Tel: 415-433-1700

Civil Action No. CVxx-xxxxx-ABC

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 45.)

This subpoena for *(name of individual and title, if any)* _____

was received by me on *(date)* _____ .

❒ I served the subpoena by delivering a copy to the named person as follows: _____

_____

_____ on *(date)* _____ ; or

❒ I returned the subpoena unexecuted because: _____

_____ .

Unless the subpoena was issued on behalf of the United States, or one of its officers or agents, I have also tendered to the witness fees for one day's attendance, and the mileage allowed by law, in the amount of

$ _____ .

My fees are $ _____ for travel and $ _____ for services, for a total of $ 0.00 .

I declare under penalty of perjury that this information is true.

Date: _____

_____
Server's signature

_____
Printed name and title

_____
Server's address

Additional information regarding attempted service, etc:

Federal Rule of Civil Procedure 45 (c), (d), and (e) (Effective 12/1/07)

(c) Protecting a Person Subject to a Subpoena.

(1) ***Avoiding Undue Burden or Expense; Sanctions.*** A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The issuing court must enforce this duty and impose an appropriate sanction — which may include lost earnings and reasonable attorney's fees — on a party or attorney who fails to comply.

(2) ***Command to Produce Materials or Permit Inspection.***

(A) *Appearance Not Required.* A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.

(B) *Objections.* A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing or sampling any or all of the materials or to inspecting the premises — or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:

(i) At any time, on notice to the commanded person, the serving party may move the issuing court for an order compelling production or inspection.

(ii) These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

(3) ***Quashing or Modifying a Subpoena.***

(A) *When Required.* On timely motion, the issuing court must quash or modify a subpoena that:

(i) fails to allow a reasonable time to comply;

(ii) requires a person who is neither a party nor a party's officer to travel more than 100 miles from where that person resides, is employed, or regularly transacts business in person — except that, subject to Rule 45(c)(3)(B)(iii), the person may be commanded to attend a trial by traveling from any such place within the state where the trial is held;

(iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or

(iv) subjects a person to undue burden.

(B) *When Permitted.* To protect a person subject to or affected by a subpoena, the issuing court may, on motion, quash or modify the subpoena if it requires:

(i) disclosing a trade secret or other confidential research, development, or commercial information;

(ii) disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party; or

(iii) a person who is neither a party nor a party's officer to incur substantial expense to travel more than 100 miles to attend trial.

(C) *Specifying Conditions as an Alternative.* In the circumstances described in Rule 45(c)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:

(i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and

(ii) ensures that the subpoenaed person will be reasonably compensated.

(d) Duties in Responding to a Subpoena.

(1) ***Producing Documents or Electronically Stored Information.*** These procedures apply to producing documents or electronically stored information:

(A) *Documents.* A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.

(B) *Form for Producing Electronically Stored Information Not Specified.* If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

(C) *Electronically Stored Information Produced in Only One Form.* The person responding need not produce the same electronically stored information in more than one form.

(D) *Inaccessible Electronically Stored Information.* The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

(2) ***Claiming Privilege or Protection.***

(A) *Information Withheld.* A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:

(i) expressly make the claim; and

(ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

(B) *Information Produced.* If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information to the court under seal for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

(e) Contempt. The issuing court may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena. A nonparty's failure to obey must be excused if the subpoena purports to require the nonparty to attend or produce at a place outside the limits of Rule 45(c)(3)(A)(ii).